

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

HAMILTON BANK N.A.,
EDUARDO A. MASFERRER, and
MARIA F. DIAZ

MUR 4806

**RESPONDENTS' RESPONSES AND
OBJECTIONS TO THE FEC'S INTERROGATORIES**

Hamilton Bank, N.A. (the "Bank"), Eduardo A. Masferrer and Maria F. Diaz (collectively, "Respondents"), by and through their undersigned attorneys, Paul, Hastings, Janofsky & Walker LLP, hereby respond to the Federal Election Commission's (the "FEC") Interrogatories as follows:

GENERAL OBJECTIONS TO THE FEC'S INTERROGATORIES

Respondents hereby make the following general objections applicable to each and every one of the FEC's interrogatories:

A. Respondents object to each interrogatory to the extent that it seeks the disclosure of privileged communications, attorney's work-product, and/or other privileged material, including material prepared by or for counsel in anticipation of or after the commencement of this proceeding (Objection on the ground of "Privilege").

B. Respondents object to each interrogatory to the extent that it seeks confidential, personal, proprietary business or commercial information (Objection on the ground of "Confidentiality").

C. Respondents object to each interrogatory to the extent that it requires them to identify persons and/or describe information known to or under the control of other persons (Objection on the ground of "Control").

D. Respondents object to each interrogatory to the extent that it calls for information that relates to matters not covered by these proceedings, is not material and necessary to the prosecution or defense of this proceeding, is irrelevant or unreasonably requires Respondents to speculate as to the nature and/or scope of the information sought (Objection on the ground of "Relevance").

E. Respondents object to each interrogatory to the extent that it is overbroad or vexatious, or seeks information that is unduly burdensome to obtain, or calls for Respondents to investigate for and provide information that the FEC has in its possession, including requests for "all" persons when all relevant facts can be obtained from fewer than "all" persons (Objection on the ground of "Undue Burden").

F. Respondents object to each interrogatory to the extent that it is ambiguous or otherwise vague (Objection on the ground of "Vagueness").

Respondents assert each of the General Objections set forth above to each of the FEC's interrogatories. In addition to the General Objections set forth above, Respondents may also state other specific objections to interrogatories where appropriate, including objections that are not generally applicable to all of the interrogatories. By setting forth such specific objections, Respondents do not intend to limit or restrict the General Objections set forth above. To the extent that Respondents respond to

interrogatories to which they object, such objections are not waived by responding to each interrogatory. Respondent's failure to object to an interrogatory, or their statement that they will respond to an interrogatory, is not an indication that they are actually able to answer such interrogatory.

Respondents further state that their review of the events relating to this matter is ongoing, and that Responses and Objections reflect the information that Respondents currently have obtained. Respondents reserve the right to supplement or revise these Responses and Objections as additional information becomes available.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Respondents object to each of the definitions contained in the FEC's interrogatories to the extent that the purported definitions of particular terms extend beyond or vary from their generally accepted semantic or legal meanings, and object to each of the instructions contained in the interrogatories to the extent that they purport to impose obligations on Respondents that exceed or vary from that required by law.

FEC's Definition of "Identify":

Respondents object to the definition of the term "'Identify' with respect to a person" on the ground of Confidentiality, Control and Relevance.

RESPONSES TO SPECIFIC INTERROGATORIES

Interrogatory No. 1:

Please identify the current officers of Hamilton Bank, N.A. ("Bank") and the dates they took office.

Response to Interrogatory No. 1:

Respondents object to Interrogatory No. 1 on the grounds of Relevance and Vagueness. Subject to and without waiving these objections, the current senior officers of Hamilton Bank and the dates they took such offices are:

Eduardo A. Masferrer
Chairman of the Board and Chief Executive Officer
March 1, 1988

Maura A. Acosta
Executive Vice-President
May 1, 1988

Juan Carlos Bernacé
President
December 16, 1997

J. Reid Bingham, Esq.
Secretary and General Counsel
October 1, 1996

Maria F. Diaz
Senior Vice-President for Finance
June 26, 1996

Sergio Sotolongo
Senior Vice-President for International Banking
June 26, 1996

Adolfo Martinez
Senior Vice-President
October 28, 1994

Guillermo Gomez
Senior Vice-President for Corporate Trade
January 15, 1998

John Jacobs
Senior Vice-President
January 26, 1998

Hector Ramirez
Senior Vice-President for Structure Finance
March 25, 1998

Claudia Helguero
Senior Vice-President for Discount and Forfeiting
August 19, 1998

The business address and telephone number for these senior officers is:

Hamilton Bank, N.A.
3750 N.W. 87th Avenue
Miami, FL 33178
(305) 717-5500

Interrogatory No. 2:

Please identify all person(s) with authority to approve expenditures by the Bank in 1996.

Response to Interrogatory No. 2:

Respondents object to Interrogatory No. 2 on the grounds of Relevance and Vagueness. Subject to and without waiving these objections, the following guidelines applied with respect to the approval of expenditures by the Bank in 1996:

Amount and Type of Expense

Approval Required

Lease and Rental Contracts

less than \$25,000

Vice-President for Finance and Head
of division requesting procurement

\$25,000 — \$50,000

Chairman/CEO and Vice-President
for Finance

more than \$50,000

Chairman/CEO, any two members of
the Board of Directors, and the Vice
President for Finance

Consultant and Subcontractor Fees

less than \$5,000

Vice-President for Human Resources
and Head of division requesting
procurement

\$5,000 to \$10,000

Vice-President for Finance and
Head of division requesting
procurement

\$10,001 to \$50,000

Chairman/CEO and Vice-President
for Finance

more than \$50,000

Board of Directors

Legal Services

\$7,501 or less

General Counsel

\$7,502 to \$15,000

Vice-President for Finance and
General Counsel

\$15,001 to \$49,999

Chairman/CEO

\$50,000 and over

Board of Directors

Capital Expenditures

\$500 to \$2,499	Purchasing Manager and Head of division requesting procurement
\$2,500 to \$4,999	Vice-President for Human Resources and Head of division requesting procurement
\$5,000 to \$9,999	Vice-President for Finance and Head of division requesting procurement
\$10,000 to \$50,000	Chairman/CEO and Vice-President for Finance
more than \$50,000	Chairman/CEO and any two members of the Board of Directors, and the Vice President for Finance

Other Recurring Expenditures

less than \$250	Mail/Purchasing Clerk and the Head of the Division requesting the procurement
\$250 to \$2,499	Purchasing Manager and the Head of the division requesting the procurement
\$2,500 to \$9,999	Vice-President for Human Resources and the Head of the division requesting the procurement
\$10,000 to \$24,999	Vice-President for Finance and Head of division requesting procurement
\$25,000 to \$50,000	Chairman/CEO and Vice-President for Finance

more than \$50,000

Chairman/CEO and any two
members of the Board of Directors,
and the Vice-President for Finance

Interrogatory No. 3:

On April 1, 1996 the Bank and/or its Chairman, Eduardo A. Masferrer, received a solicitation for a \$50,000 contribution to the Democratic National Committee ("DNC") for the purchase of an annual trustee membership from Howard M. Glick, Director of the National Finance Board. On April 26, 1996, the Bank made a contribution by means of a check in the amount of \$50,000 to the DNC for the purchase of an annual trustee membership on behalf of Mr. Masferrer. Please identify all person(s) who requested and/or authorized this expenditure by the Bank, and explain each person's role in the transaction.

Response to Interrogatory No. 3:

Respondents object to Interrogatory No. 3 on the grounds of Confidentiality, Relevance, Undue Burden, and Vagueness. Respondents further object to the use in Interrogatory No. 3 of the phrase "for the purchase of an annual trustee membership on behalf of Mr. Masferrer," which mischaracterizes the state of the evidence in this case. Read literally, the correct response to Interrogatory No. 3 is that no one requested and/or authorized the purchase of an annual trustee membership on behalf of Mr. Masferrer. Based on the inquiry conducted by Respondents to date, and subject to and without waiving these objections, the following information is responsive to this Interrogatory:

Sometime in the early Spring 1996, Mr. Masferrer held conversations with Charles Dusseau, the former Secretary of Commerce of Florida. Mr. Dusseau advised Mr. Masferrer that contributing to the Democratic National Committee (the "DNC")

would be good business "for the Americas."^{1/} Subsequently, on April 1, 1996, Mr. Masferrer received a follow-up letter from Howard M. Glicken, Director of the DNC's National Finance Board, soliciting a \$50,000 contribution from the Bank to the DNC.^{2/}

After receipt of Mr. Glicken's letter, Mr. Masferrer met with Ms. Diaz and his Acting General Counsel, Armin Seifart, concerning the legality of a contribution to the DNC. Subsequently, Mr. Seifart sought outside legal advice on the same issue. Pending legal approval from Mr. Seifart, Mr. Masferrer advised Ms. Diaz to prepare the necessary paperwork to process the contribution.

On April 18, 1996, Ms. Diaz initiated the "Purchase Requisition" form for the check. At that time, Ms. Diaz initiated the form using the only information available to her at the time — information contained in Mr. Glicken's April 1 letter, including the "Trustee Membership" designation. However, Ms. Diaz directed her staff to hold the Purchase Requisition and issuance of the check until she had received legal approval for the contribution.

^{1/} The Bank historically has obtained over two-thirds of its net income from transactions in Latin America.

^{2/} Although Mr. Glicken's letter describes the "cost and benefits of becoming a trustee member of the DNC," the facts indicate that Mr. Masferrer did not receive the enumerated benefits. In fact, Mr. Masferrer attended only two events as a result of the contribution — the April 29 Presidential Gala in Miami, which *anyone* could have attended by paying for a table, and one of the 1996 White House Christmas parties. Furthermore, Mr. Masferrer never received "preferential treatment for appointments to Boards and Commissions."

Upon receiving legal approval from Mr. Seifart, Mr. Masferrer discussed making the contribution with the Bank's Board of Directors. On April 23, 1996, the Board of Directors approved the contribution and requested Ms. Diaz to issue the check.

During the next few days, Mr. Dusseau communicated several times with Ms. Diaz, who advised Mr. Dusseau that she would not release a check unless and until a legal opinion was received approving the contribution. Mr. Dusseau arranged for Joseph Sandler, the DNC's General Counsel, to provide a legal opinion. Upon receiving Mr. Sandler's opinion on April 26, 1996, Ms. Diaz advised her staff to forward the Purchase Requisition form, along with Mr. Glicken's April 1 letter and Mr. Sandler's opinion, to the Bank's Accounts Payable Department. An Accounts Payable staff member then completed the Purchase Requisition using information contained in Mr. Sandler's opinion. However, the staff member inadvertently failed to revise the information previously included in the Purchase Requisition to reflect that the contribution — and the check — should be made to the DNC's Building Fund as indicated in the legal opinion. Using the incorrect information listed on the Purchase Requisition, an accounts payable clerk typed a check made payable to the DNC instead of the DNC — Building Fund.

Interrogatory No. 4:

Please identify the department within the Bank that processes requests for contributions to charitable or other organizations. Please identify the person(s) in 1996 [sic] were responsible for determining whether a contribution would be made by the Bank and who ensured that the contribution was made properly to the correct organization.

Response to Interrogatory No. 4:

Respondents object to Interrogatory No. 4 on the grounds of Privilege, Confidentiality, Relevance and Vagueness. Subject to and without waiving these objections, the following information is responsive to this Interrogatory:

a. The Accounts Payable Department processes the paperwork necessary to make payments in response to requests for contributions to charitable or other organizations.

b. The person(s) responsible for determining whether a contribution would be made by the Bank were John Stumpff, Senior Vice-President for Administration (for contributions under \$5,000); and Mr. Masferrer, Ms. Diaz and the Bank's Board of Directors (for all other contributions).

Interrogatory No. 5:

Please identify all person(s) who solicited the Bank for the contribution to the DNC, explain the method by which the Bank was solicited, and give the date(s) on which the solicitation(s) were received verbally and/or in writing.

Response to Interrogatory No. 5:

Respondents object to Interrogatory No. 5 on the grounds of Confidentiality, Control, Relevance, Undue Burden and Vagueness. Subject to and without waiving these objections, Respondents respond to this Interrogatory as follows:

a. Mr. Dusseau had conversations with Mr. Masferrer about making a contribution to the DNC in early Spring of 1996.

b. On April 1, 1996, Mr. Glicken sent Mr. Masferrer a solicitation letter requesting a contribution.

Interrogatory No. 6:

Please state the method by which the \$50,000 Bank check cited in Interrogatory 3, was transmitted to the DNC, e.g., regular mail, hand-delivered. If the contribution was hand-delivered to the DNC or to a representative of the DNC, please identify the person who delivered the check for the Bank and the person who received the check for the DNC.

Response to Interrogatory No. 6:

Respondents object to Interrogatory No. 6 on the grounds of Confidentiality, Relevance and Vagueness. Subject to and without waiving these objections, Respondents respond as follows:

Upon information and belief, the contribution check from the Bank was transmitted to the DNC via United States Mail.

Interrogatory No. 7:

Has the Bank made any other contribution(s) from any of its accounts to the DNC since January 1, 1996[?] If so, please give the date(s) of the contribution(s) and the amount(s).

Response to Interrogatory No. 7:

Respondents object to Interrogatory No. 7 on the grounds of Confidentiality, Relevance, Undue Burden and Vagueness. Subject to and without waiving these objections, Respondents respond as follows:

The Bank has not made any other contributions from any of its accounts to the DNC since January 1, 1996.

Dated: November 12, 1998

Respectfully submitted,

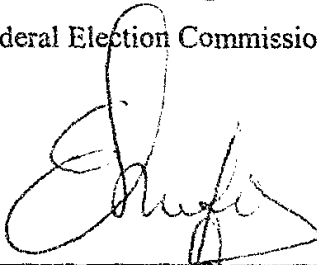
**PAUL, HASTINGS, JANOFSKY
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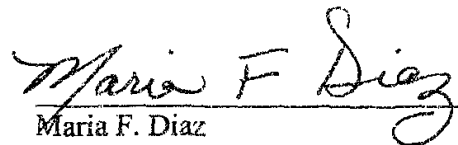
*Attorneys for Hamilton Bank, N.A.,
Eduardo A. Masferrer and Maria F. Diaz*

VERIFICATION

The undersigned hereby declare under penalty of perjury that the foregoing Responses to the Federal Election Commission's Interrogatories are true and correct.



Eduardo A. Masferrer
*Personally and on Behalf of
the Bank*



Maria F. Diaz

2010-04-29 15:33:30

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

HAMILTON BANK N.A.,
EDUARDO A. MASFERRER, and
MARIA F. DIAZ

MUR 4806

RESPONDENTS' FIRST WRITTEN SUBMISSION
IN RESPONSE TO FACTUAL AND LEGAL ANALYSIS OF
THE FEDERAL ELECTION COMMISSION

Introduction

Hamilton Bank, N.A. (the "Bank"), Eduardo A. Masferrer, and Maria F. Diaz (collectively, "Respondents"), by and through their undersigned attorneys, Paul, Hastings, Janofsky & Walker LLP, hereby respond to the Factual and Legal Analysis (the "FEC Analysis") of the Federal Election Commission (the "FEC") presented in support of the FEC's finding of a reason to believe there has been a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). This Response is being submitted concurrently with Respondents' Responses and Objections to the FEC's Interrogatories.^{1/}

Counterstatement of the Law

Respondents accept the FEC's Statement of the Law. Respondents note, however, that a "willful" violation of the Act exists only in the case of "defiance or such

^{1/} Citations to those Responses and Objections will be referred to herein as "Resp. Interrog. No. ___."

reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act."^{2/}

Counterstatement of the Facts

On April 26, 1996, the Bank issued Expense Check No. 043264 in the amount of \$50,000, payable to the order of "Democratic National Committee, 430 South Capitol Street, S.E., Washington, D.C. 20003." As the ensuing discussion of the facts will show:

- This check was issued only *after* the Bank had obtained a written opinion dated April 24, 1996, from Joseph E. Sandler, General Counsel of the Democratic National Committee ("DNC"), advising the Bank that "it is lawful for the [DNC] to accept a contribution to its Building Fund account from a national bank."^{3/} Mr. Sandler's letter advised, near the middle of page two, that "Checks to the Building Fund should be made payable to DNC — Building Fund."
- The Bank, Mr. Masferrer and Ms. Diaz intended and attempted fully to comply with the Act in seeking advice of counsel, obtaining the written opinion of the DNC and holding the purchase requisition and delaying issuance of the check until such advice was obtained.

^{2/} *AFL-CIO v. FEC*, 628 F.2d 97, 101 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (quoting *Frank Irey Jr., Inc. v. Occupational Safety and Health Review Comm'n*, 519 F.2d 1200, 1207 (3d Cir. 1974), *reh'g granted and opinion vacated*, 519 F.2d 1215 (3d Cir. 1975)(*en banc*), *cert. granted*, *Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n*, 424 U.S. 964 (1976), *aff'd*, 430 U.S. 422 (1977)).

^{3/} See Letter dated April 24, 1996, from Joseph E. Sandler to Armin Seifart (attached hereto as Exhibit 1).

- The failure of the Bank to issue the check to "DNC — Building Fund" was pure inadvertence and clerical error. Furthermore, according to a June 16, 1997, letter from the DNC, the fact that the Bank's check was not deposited in the DNC's Building Fund account — the effective conduct that resulted in any violation of the Act that has occurred — "was an error by the DNC staff who processed the contribution and does not reflect any mistake on the part of the Bank."^{4/}

In short, the facts do not fairly provide even a reason to believe that a violation of the Act has occurred, much less probable cause to that effect.

Following receipt of the FEC's "reason to believe" finding, counsel for Respondents commenced a preliminary inquiry regarding the payment in question. Far from revealing a violation of the Act, that inquiry has, to date, uncovered only clerical error following a thorough and commendable effort by Respondents to comply with the Act.

The FEC is correct that the Bank's payment followed a solicitation by representatives of the DNC to Eduardo Masferrer, chairman of the Bank. However, it is not the case that Mr. Masferrer ever intended that he would obtain a *personal* benefit if the Bank were to make a contribution to the DNC. Mr. Masferrer originally was contacted regarding a contribution to the DNC by Charles Dusseau, the former Secretary of Commerce of Florida. During their conversations, Mr. Dusseau advised Mr. Masferrer

4/ See Letter dated June 16, 1997, from Joseph E. Sandler to Maria Diaz (attached hereto as Exhibit 2).

that a contribution *by the Bank* to the DNC would be good for the Americas.^{5/} (See Resp. Interrog. No. 3). On April 1, 1996, Howard Glicken, Director of DNC's National Finance Board, sent Mr. Masferrer a letter in which Mr. Glicken purported to "confirm the various conversations" Mr. Masferrer had with Mr. Dusseau "about becoming a Trustee of the Democratic National Committee."^{6/} However, Mr. Glicken was not a party to the conversations between Mr. Dusseau and Mr. Masferrer, both of whom clearly intended that the payment would be made *by the Bank* and *for the Bank*. In fact, the penultimate paragraph of Mr. Glicken's letter is devoted to "possibilities . . . regarding benefits in relation to" the Bank's activities. (Exhibit 3, at 2).

Moreover, most of the "benefits of Trusteeship" which form the basis for the FEC's conclusion that Mr. Masferrer sought personal gain through the contribution to the DNC in fact were never received by Mr. Masferrer.^{7/} Mr. Masferrer never sought or received any "preferential treatment for appointments to Boards and Commissions" or other so-called "Trustee benefits" recited in Mr. Glicken's letter. (See Resp. Interrog. No.

^{5/} The Bank historically has obtained over two-thirds of its net income from transactions in Latin America.

^{6/} See Letter dated April 1, 1996, from Howard M. Glicken to Eduardo A. Masferrer (attached hereto as Exhibit 3).

^{7/} Mr. Masferrer attended two events. There was a Presidential Gala on April 29, 1996 in Miami, which he attended with other members of the Bank's board of directors. In fact, this Gala could have been attended by *anyone*, provided they paid for a table. Later that same evening he also attended a smaller, related gathering of approximately 60 persons. He also received an invitation to the White House Christmas party in December 1996. (See Resp. Interrog. No. 3).

3, at n.1). Mr. Glicken's promotional statements in his April 1 letter are insufficient to establish that Mr. Masferrer's harbored any intent to obtain personal gain through a contribution by the Bank. Mr. Masferrer's true intent -- to ensure that both he and the Bank fully complied with the Act -- instead is exemplified by the fact that Mr. Masferrer proceeded to obtain legal advice regarding the ability *of the Bank* to make a contribution.

Thus, after receiving Mr. Glicken's April 1 letter, Mr. Masferrer met with Ms. Diaz, Senior Vice President for Finance and Comptroller of the Bank, and Mr. Armin Seifart, then Deputy General Counsel of the Bank, and instructed them to ascertain the legality of a contribution by the Bank to the DNC. Mr. Seifart sought the advice of outside legal counsel regarding the requirements of the Act. (See Resp. Interrog. No. 3).

Meanwhile, on April 18, Ms. Diaz *initiated* a Bank Purchase Requisition form, filling out only the information that was available to her at that time; *i.e.*, the information contained on Mr. Glicken's April 1 letter.^{8/} Although Ms. Diaz initiated the Purchase Requisition on April 18, and she and Mr. Masferrer signed the approvals for the requisition on this date, Ms. Diaz specifically instructed the Bank's clerical staff not to proceed with issuance of a check until a legal opinion was obtained. (See Resp. Interrog. No. 3). Between April 18 and April 26, Ms. Diaz had a number of conversations with

^{8/} The April 1 letter directed that the check be "made payable to the Democratic National Committee." In initiating the Requisition Order, Ms. Diaz entered as the purpose of the requisition: "Democratic-National-Committee Annual Trustee Membership." She obtained this information from the last line of the first paragraph of the second page of the April 1 letter (which she highlighted). See highlighted copy of April 1, 1996 Letter (attached hereto as Exhibit 4). The highlighting appears in the original.

both Mr. Dusseau and Mr. Sandler in which she indicated that she was awaiting a legal opinion before the check would be issued.

On April 25, 1996, Mr. Sandler, the DNC's General Counsel, sent a legal opinion confirming that the Bank could legally contribute to the DNC's Building Fund account.^{9/} Ms. Diaz forwarded Mr. Sandler's letter to the Bank's Accounts Payable Department. (See Resp. Interrog. No. 3). It is at this stage that the clerical error occurred. The Purchase Requisition form that had been filled out by Ms. Diaz on April 18 for a check to the "Democratic-National-Committee Annual Trustee Membership" was not revised by the Bank's Accounts Payable staff to reflect the proper payee: the Democratic National Committee *Building Fund*. The check was issued on April 26, 1996, and mailed out on or about that date.^{10/}

Apparently, upon receipt of the Bank's check — which very clearly was drawn on the funds of a national bank — DNC staff inadvertently deposited the check in

9/ See Exhibit 1. (The facsimile cover sheet for this letter bears a handwritten notation that it was sent on April 25.)

10/ That the check was issued subsequent to receipt of Mr. Sandler's opinion, and relying on its contents, is established by several facts. First, the check post-dates receipt of the Sandler opinion. Second, the check issuance information box stamped on the Purchase Requisition form is dated April 26, 1996, and bears the marks and initials of a member of the Accounts Payable staff. Third, when Ms. Diaz received Mr. Sandler's opinion, she gave it to an Accounts Payable employee who highlighted the "430 South Capitol Street, S.E." address for the DNC on the bottom of the facsimile cover sheet accompanied the opinion letter. See highlighted copy of the April 24 letter (attached hereto as Exhibit 5). This highlighted address information was used by the Accounts Payable clerk to type the DNC address directly on the check. The highlighting appears in the original.

the DNC's non-federal corporate account. In June 1997, after the error was discovered (and prior to the FEC's involvement in this matter), Mr. Sandler of the DNC sent the Bank a letter specifically stating that the Bank's check "was inadvertently deposited in the DNC's non-federal corporate account, but should have been deposited in the DNC's Building Fund account. This was an error by the DNC staff who processed the contribution and does not reflect any mistake on the part of the Bank."^{11/} Mr. Sandler's letter also stated that the DNC "will immediately transfer this contribution from the non-federal corporate account to the Building Fund, and correct its records accordingly."^{12/}

Analysis

As the foregoing factual statement shows, and contrary to the conclusions set forth in the FEC's Analysis, there simply is no basis to conclude that a "knowing and willful" violation of 2 U.S.C. § 441b(a) has occurred. The FEC's Analysis recites four grounds for contending that the Bank never intended to contribute to the DNC Building Fund. All four of these contentions lack a basis in fact.

1. Mr. Glicker's Letter

The FEC's Analysis first asserts that Mr. Glicker's April 1, 1996, letter fails to mention the DNC Building Fund, but rather addresses the advantages of

^{11/} See Exhibit 2.

^{12/} *Id.*

becoming a trustee member of the DNC.^{13/} However, the statements of Mr. Glicken, who is not a Respondent and is not affiliated with the Bank in any way, cannot serve to establish the *Respondents'* intent with respect to the payment to the DNC. Moreover, as detailed above, Mr. Glicken's letter predates by several weeks any payment by the Bank to the DNC, which was made only after the Bank obtained legal advice from outside counsel and a legal opinion from the DNC that a payment would be proper if made to the DNC Building Fund. If the Bank intended to disregard the Act, it would not have insisted on obtaining the DNC's opinion and outside advice in the first place, and it would not have delayed making any payment until that opinion was received. This set of facts demonstrates precisely the opposite of what the FEC's Analysis concludes: the Bank fully intended to comply with the Act, and specifically intended that its payment be made in compliance with Mr. Sandler's opinion letter, *i.e.*, that the payment be deposited in the DNC's Building Fund.

2. The Designation On The Bank Check

The reasons why the April 18, 1996, Purchase Requisition, and thus the Bank's April 26 check, failed to reflect the Building Fund designation was explained above. When Ms. Diaz began filling out the Purchase Requisition on April 18, she relied on the only information then available: Mr. Glicken's April 1 letter. That the Bank personnel intended to supersede the Glicken letter information with the information on the April 24 Sandler opinion letter is reflected in the highlighted documents attached

^{13/} FEC Analysis at 5.

hereto and in the fact that the DNC address used to fill out the check was taken from the Sandler opinion letter. The failure of the check to reflect payment to the Building Fund was, as discussed above, due to inadvertence, not any intent to violate the Act.

3. Invitations Received By Mr. Masferrer

The FEC's conjecture that the Respondents intended to violate the Act appears to be based on the following theory: although the Respondents were aware (through Mr. Sandler's opinion letter) that any payment by the Bank must be made to the DNC Building Fund, they nonetheless intended that the payment not be used for the Building Fund in order to secure for Mr. Masferrer the benefits of becoming a trustee of the DNC. This theory is wholly unsupported by the facts, and makes no sense. For the FEC's theory to hold, it would have to be the case that (i) Mr. Masferrer was interested in obtaining any "personal" benefits that would flow from a payment; and (ii) that the Respondents were specifically aware that a payment to the DNC Building Fund, rather than to the DNC's general account, would somehow negate these benefits. But the facts show just the opposite. Mr. Masferrer was never interested in obtaining "personal" benefits. Mr. Masferrer never received, *nor pursued*, the list of "personal benefits" of becoming a trustee enumerated in Mr. Glicken's letter.^{14/} Moreover, nowhere has the FEC established that the Respondents were operating under the assumption that the "benefits" that Mr. Masferrer is alleged to have desired would not have been available if the Bank's check had been made out to the DNC Building Fund. (Instead, counsel's

^{14/} See note 7, *supra*.

conversations with the DNC suggest that the "benefits" would have been accorded under either circumstance.) Without this critical predicate, the FEC's theory of intentional and willful violation falls apart.

4. DNC "Thank You" Letter

Finally, the FEC's Analysis points to the fact that the DNC sent Mr. Masferrer a "thank you" letter dated November 15, 1996,^{15/} and states that "no action was taken by the Bank to rectify any error reflected in the letter." (FEC Analysis at 5). The letter was addressed to "Mr. Edwardo [sic] Masferrer, *Chairman Hamilton Bank*. The letter was sent seven months before the error regarding the DNC's mis-deposit of the Bank's check was discovered, and the Respondents had absolutely no reason to believe that this letter signified that any violation of the Act may have occurred. The letter contained no reference to the trusteeship or benefits. Simply put, a form thank you letter sent to thousands of people and generated almost seven months after the Bank's check was issued, and seven months before the DNC's error was discovered, cannot serve as evidence that the Respondents intentionally and willfully violated the Act.

Conclusion

For the foregoing reasons, the Respondents request that the FEC conclude its investigation of this matter and issue a determination that there is no probable cause to believe that a violation of the Act has occurred in this instance.


Dated: November 12, 1998

^{15/} Attached hereto as Exhibit 6.

Respectfully submitted,

**PAUL, HASTINGS,
JANOFSKY & WALKER LLP**

By:



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Attorneys for Hamilton Bank, N.A.,

Eduardo A. Masferrer and Maria F. Diaz

Exhibit 1

DEMOCRATIC NATIONAL COMMITTEE

Donald L. Fowler
National Chair

Christopher J. Smith
General Counsel

OFFICE OF THE GENERAL COUNSEL
FAX TRANSMITTAL SHEET

DATE: 4-24-96 / 4/25/96 FAXED: VERIFIED BY:

TO: Armin Seifart, Deputy General Counsel, Hamilton Bank

ATTN: MARIA

OF PAGES: (including cover): 3 FAX #: 305-717-5631

FROM: Joe Sandler, General Counsel, DNC

PHONE #: JOE SANDLER 202-863-7110, WANDA WHEELER 202-863-7108, NEIL REIFF 202-479-5111

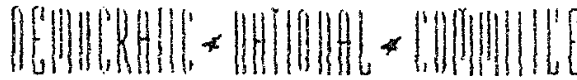
IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,

PLEASE CALL AT (202)

COMMENTS: Per your request.

PHONE #: (202) 863-8000
FAX #: (202) 863-8081/8012

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Donald L. Fowler, *Vice-Chancellor* • Christopher J. Gould, *Dean of Law*

Armin Seifart, Esq.
Deputy General Counsel
Hamilton Bank
3750 N.W. 87th Ave.
Miami, Florida 33178

Per your request, this will confirm that it is lawful for the Democratic National Committee to accept a contribution to its building fund account from a national bank.

It is unlawful for any national bank. . . to make a contribution or expenditure in connection with any election to any political office. . .

any gift, subscription, loan, advance or deposit of money or anything of value to a national or State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))-- . . .

(ix) A gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of

Mr. Armin Seifart
April 24, 1996
Page 2

defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for federal office. . . .

This regulation makes clear that a political party committee may accept such donations to a building fund from a national bank, since such a donation does not constitute a "contribution" for purposes of the ban on corporate contributions in connection with any election set forth in 2 U.S.C. § 441b(a) of FECA and part 114 of the Commission's regulations.

The DNC Building Fund is a separate bank account, into which are deposited only contributions designated for the "Building Fund," and the funds in which are used only for a purpose permitted by 2 U.S.C. § 431(8)(B)(viii) and 11 C.F.R. § 114.1(a)(2)(ix), i.e., to defray the costs of purchasing the Democratic National Headquarters building. None of the funds in the Building Fund are used in connection with any federal, state or local election or for any purpose whatsoever other than to defray the costs of the purchasing the Democratic National Headquarters building.

For these reasons, a donation to the DNC Building Fund does not constitute a "contribution" for purposes of 15 U.S.C. § 791(h), accordingly, a national bank may lawfully make a donation, without limitation in amount, to the DNC Building Fund.

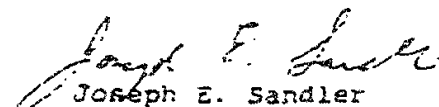
Checks to the Building Fund should be made payable to "DNC--Building Fund."

It should be noted that all contributions to the DNC Building Fund are publicly disclosed on the reports filed by the DNC with the FEC.

It should also be noted that contributions to the DNC Building Fund are not tax-deductible.

If you have any questions or need further information concerning the above, please do not hesitate to contact me at 202-863-7110.

Sincerely yours,


Joseph E. Sandler
General Counsel

For disallowance of certain other taxes, see section 164(c).

Amendments

P.L. 88-272, § 207(b)(3):

Amended part IX of subchapter B of chapter 1 by adding section 275 thereto. The amendment applies with respect to taxable years beginning after December 31, 1963.

[Sec. 276]

SEC. 276. CERTAIN INDIRECT CONTRIBUTIONS TO POLITICAL PARTIES.

[Sec. 276(a)]

(a) **DISALLOWANCE OF DEDUCTIONS.**—No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate,

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate, or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

Amendments

P.L. 93-625, § 10(g):

P.L. 93-625, § 10(g), repealed P.L. 90-346. This latter Public Law, which was effective with respect to amounts paid or incurred on or after January 1, 1968, provided as follows:

"Sec. 1. Subsection (a) of section 276 of the Internal Revenue Code of 1954 (relating to certain indirect contributions to political parties) shall not apply to any amount paid or incurred for advertising in a convention program of a political party distributed in connection with a convention held for the purpose of nominating candidates for the offices

of President and Vice President of the United States, if the proceeds from such program are used solely to defray the costs of conducting such convention (or a subsequent convention of such party held for such purpose) and the amount paid or incurred for such advertising is reasonable in light of the business the taxpayer may expect to receive—

"(1) directly as a result of such advertising, or

"(2) as a result of the convention being held in an area in which the taxpayer has a principal place of business.

"Sec. 2. The first section of this Act shall apply with respect to amounts paid or incurred on or after January 1, 1968."

[Sec. 276(b)]

(b) **DEFINITIONS.**—For purposes of this section—

(1) **POLITICAL PARTY.**—The term "political party" means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make(s) expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice-presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) **PROCEEDS INURING TO OR FOR THE USE OF POLITICAL CANDIDATES.**—Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office, and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

[Sec. 276(c)]

(c) **CROSS REFERENCE.**—

For disallowance of certain entertainment, etc., expenses, see section 274.

Internal Revenue Code

Sec. 276(c)

Exhibit 2

Democratic National Committee

Steve Grossman, National Chair • Governor Roy Romer, General Chair

June 16, 1997

Maria Diaz
Senior Vice President—Finance
Hamilton Bank
3750 N.W. 87th Avenue
Miami, Florida 33178

Dear Ms. Diaz:


This will address the question you raised about the contribution made by Hamilton Bank to the Democratic National Committee on or about April 30, 1996, in the amount of \$50,000.

This contribution was inadvertently deposited in the DNC's non-federal corporate account, but should have been deposited in the DNC's Building Fund account. This was an error by the DNC staff who processed the contribution and does not reflect any mistake on the part of the Bank.

The DNC will immediately transfer this contribution from the non-federal corporate account to the Building Fund, and correct its records accordingly.

If you have any questions concerning the above, or need additional information, please do not hesitate to contact me at 202-863-7110.

Sincerely yours,


Joseph E. Sandler
General Counsel

cc: Brad Marshall
Neil Reiff



DEMOCRATIC • NATIONAL • COMMITTEE

Donald L. Fowler, *National Chair* • Christopher J. Dodd, *General Chair*

April 1, 1996

Eduardo A. Masferrer
Chairman
Hamilton Bank, N.A.
3750 N.W. 87th Avenue
Miami, Florida 33178

Dear Eduardo,

This letter will confirm the various conversations you have had with Charles Dusseau about becoming a Trustee of the Democratic National Committee. I can tell you from personal experience that the business networking opportunities and results I have had over the years, have made this investment one of the most effective I have made.

Trustees are invited to attend a minimum of one White House Dinner with the President and First Lady, along with Key Cabinet and Administration People in the State dining room. You are invited during the year to an assortment of small receptions and dinners, including with Cabinet members, key White House people and the Principals. Trustees are an honored guest at any Presidential or Vice Presidential fundraiser in the country. You will also receive VIP status at the Democratic National Convention, which will include parties, etc. and the use of a sky box. You will receive preferential treatment for appointments to Boards and Commissions. In addition, you will be assigned a contact at the DNC to assist you with any of your needs in Washington, D.C., tickets, appointments, etc. In your case, I will personally be there to assist.

In the immediate future, you have the opportunity to attend a small dinner with the President in Washington. These dinners usually have around twelve people, seated at the same table with the President, and last for a few hours of high quality dialogue. We have dinners scheduled on April 4th, 8th and 11th and a few small coffees at the White House during April, with a similar format. By acting now, you will also have a gold ring table at the April 29th Presidential Gala in Miami and be invited to a dinner afterwards with the President and twenty participants.

Masferrer letter
Page two

In addition, there are a number of possibilities we can discuss in person, regarding benefits in relation to Hamilton Bank's Latin American activities, which would include State Department, Commerce Department, White House (McClary), Treasury, Exim Bank, IDB, OPIC and others. The annual Trustee membership is \$50,000, made payable to the Democratic National Committee.

Thank you for your serious consideration of the above. Please let me know if I can be of further assistance. I'll look forward to hearing from you.

Warm regards,



Howard M. Glick
Director
National Finance Board

CC: Charles Dusseau

Exhibit 4



DEMOCRATIC * NATIONAL * COMMITTEE

Donald L. Fowler, *National Chair* * Christopher J. Dodd, *General Chair*

April 1, 1996

Eduardo A. Masferrer
Chairman
Hamilton Bank, N.A.
3750 N.W. 87th Avenue
Miami, Florida 33178

110

Dear Eduardo,

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Masferrer letter
Page two

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Warm regards,



Howard M. Glick
Director
National Finance Board

CC: Charles Dusseau

DEMOCRATIC * NATIONAL * COMMITTEE

Christopher J. Dodd
General Chair

FROM

WIN
IN
'96

DEMOCRATIC NATIONAL COMMITTEE

Donald E. Fowler, National Chair • Christopher J. Dodd, General Counsel

April 24, 1996

Armin Seifart, Esq.
Deputy General Counsel
Hamilton Bank
3750 N.W. 87th Ave.
Miami, Florida 33176

Dear Mr. Seifart:

Per your request, this will confirm that it is lawful for the Democratic National Committee to accept a contribution to its Building Fund account from a national bank.

Section 316(a) of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. § 441b(a), provides, in pertinent part, that:

It is unlawful for any national bank. . . to make a contribution or expenditure in connection with any election to any political office. . .

FECA provides that the term "contribution", when used in the FECA, is defined to exclude:

any gift, subscription, loan, advance or deposit of money or anything of value to a national or State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. §431(8)(B)(viii). The FEC's regulations, 11 C.F.R. § 114.1(a)(2)(ix), further provide that:

For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))-- . . .
(2) The term contribution and expenditures shall not include--

. . .
(ix) A gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of

Mr. Armin Seifart
April 24, 1996
Page 2

defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for federal office. . . .

This regulation makes clear that a political party committee may accept such donations to a building fund from a national bank, since such a donation does not constitute a "contribution" for purposes of the ban on corporate contributions in connection with any election set forth in 2 U.S.C. § 441b(a) of FECA and part 114 of the Commission's regulations.

The DNC Building Fund is a separate bank account, into which are deposited only contributions designated for the "Building Fund," and the funds in which are used only for a purpose permitted by 2 U.S.C. § 431(8)(B)(viii) and 11 C.F.R. § 114.1(a)(2)(ix), i.e., to defray the costs of purchasing the Democratic National Headquarters building. None of the funds in the Building Fund are used in connection with any federal, state or local election or for any purpose whatsoever other than to defray the costs of the purchasing the Democratic National Headquarters building.

For these reasons, a donation to the DNC Building Fund does not constitute a "contribution" for purposes of 15 U.S.C. § 791(h), accordingly, a national bank may lawfully make a donation, without limitation in amount, to the DNC Building Fund.

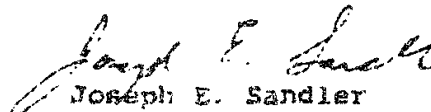
Checks to the Building Fund should be made payable to "DNC--Building Fund."

It should be noted that all contributions to the DNC Building Fund are publicly disclosed on the reports filed by the DNC with the FEC.

It should also be noted that contributions to the DNC Building Fund are not tax-deductible.

If you have any questions or need further information concerning the above, please do not hesitate to contact me at 202-363-7110.

Sincerely yours,


Joseph E. Sandler
General Counsel

For disallowance of certain other taxes, see section 164(c).

Amendments

P.L. 89-272, § 207(b)(3):

Amended part IX of subchapter B of chapter 1 by adding section 275 thereto. The amendment applies with respect to taxable years beginning after December 31, 1963.

[Sec. 276]

SEC. 276. CERTAIN INDIRECT CONTRIBUTIONS TO POLITICAL PARTIES.

[Sec. 276(a)]

(a) **DISALLOWANCE OF DEDUCTIONS.**—No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate,

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate, or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

Amendments

P.L. 93-625, § 10(g):

P.L. 93-625, § 10(g), repealed P.L. 90-346. This latter Public Law, which was effective with respect to amounts paid or incurred on or after January 1, 1968, provided as follows:

"Sec. 1. Subsection (a) of section 276 of the Internal Revenue Code of 1954 (relating to certain indirect contributions to political parties) shall not apply to any amount paid or incurred for advertising in a convention program of a political party distributed in connection with a convention held for the purpose of nominating candidates for the offices

of President and Vice President of the United States, if the proceeds from such program are used solely to defray the costs of conducting such convention (or a subsequent convention of such party held for such purpose) and the amount paid or incurred for such advertising is reasonable in light of the business the taxpayer may expect to receive—

"(1) directly as a result of such advertising, or

"(2) as a result of the convention being held in an area in which the taxpayer has a principal place of business.

"Sec. 2. The first section of this Act shall apply with respect to amounts paid or incurred on or after January 1, 1968."

[Sec. 276(b)]

(b) **DEFINITIONS.**—For purposes of this section—

(1) **POLITICAL PARTY.**—The term "political party" means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make[s] expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice-presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) **PROCEEDS INURING TO OR FOR THE USE OF POLITICAL CANDIDATES.**—Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office, and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

[Sec. 276(c)]

(c) **CROSS REFERENCE.**—

For disallowance of certain entertainment, etc., expenses, see section 274.

Internal Revenue Code

Sec. 276(c)



DEMOCRATIC * NATIONAL * COMMITTEE

Donald L. Fowler, *National Chair* • Christopher J. Dodd, *General Chair*

Exhibit 6
mailed

Gifts
for
Mama Tolos

November 15, 1996

Mr. Edwardo Masferrer
Chairman
Hamilton Bank
3750 Northwest 87th Avenue
Miami, FL 33178

Dear Edwardo:

I would like to thank you for your generous support and tremendous efforts on behalf of ~~President Clinton's reelection~~ campaign and the Democratic Party. Due to your generosity, we were able to raise a record breaking \$120 million in 1996, surpassing 1992's record by \$50 million. We are extremely grateful for your important role in helping us carry out such key campaign components such as polling, media and get out the vote operations. Each of these were crucial to a successful election.

I have thoroughly enjoyed the opportunity to work with you and thank you once again for your tremendous efforts.

Sincerely,

Richard Sullivan
National Finance Director